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PTO/SB/21 (09-04)

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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

Application Number	10/802,378
Filing Date	March 17, 2004
First Named Inventor	Krick, David T.
Art Unit	3749
Examiner Name	Joyce, Harold
Attorney Docket Number	111548-136408

ENCLOSURES (Check all that apply)

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|---|---|--|
| <input checked="" type="checkbox"/> Fee Transmittal Form | <input type="checkbox"/> Drawing(s) | <input type="checkbox"/> After Allowance Communication to TC |
| <input checked="" type="checkbox"/> Fee Attached | <input type="checkbox"/> Licensing-related Papers | <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences |
| <input type="checkbox"/> Amendment/Reply | <input type="checkbox"/> Petition | <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) |
| <input type="checkbox"/> After Final | <input type="checkbox"/> Petition to Convert to a Provisional Application | <input type="checkbox"/> Proprietary Information |
| <input type="checkbox"/> Affidavits/declaration(s) | <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address | <input type="checkbox"/> Status Letter |
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| <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53 | | |

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Schwabe, Williamson & Wyatt, P.C.		
Signature			
Printed name	Al AuYeung		
Date	July 22, 2005	Reg. No.	35,432

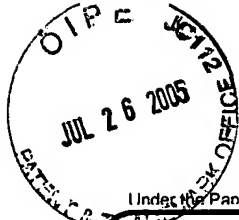
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Typed or printed name	Yvette L. Chriscaden	Date	July 22, 2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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FEE TRANSMITTAL

For FY 2005

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$)

Complete if Known

Application Number	10/802,378
Filing Date	March 17, 2004
First Named Inventor	Krick, David T.
Examiner Name	Joyce, Harold
Art Unit	3749
Attorney Docket No.	111548-136408

METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____
☒ Deposit Account Deposit Account Number: 500393 Deposit Account Name: Schwabe, Williamson et al

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee
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FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180
Total Claims		
- 20 or HP = _____ x _____ = _____		
HP = highest number of total claims paid for, if greater than 20.		
Indep. Claims		
- 3 or HP = _____ x _____ = _____		
HP = highest number of independent claims paid for, if greater than 3.		

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets _____ Extra Sheets _____ Number of each additional 50 or fraction thereof _____ Fee (\$)

_____ - 100 = _____ / 50 = _____ (round up to a whole number) x _____ = _____ Fee Paid (\$)

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Appeal Brief Filing Fee

Fees Paid (\$)

500

SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 35,432	Telephone 503-222-9981
Name (Print/Type)	Al AuYeung	Date July 22, 2005	

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application for:

KRICK, DAVID T., ET AL

Application No.: 10/802,378

Assignee: Intel Corporation

Filed: March 17, 2004

For: AIR GRATE

Examiner: Joyce, Harold

Art Group: 3749

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Typed or Printed: Yvette L. Chriscaden

Signature: [Handwritten Signature] Date: 7/22/05

MAIL STOP APPEAL BRIEF-PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

APPELLANT'S APPEAL BRIEF

Seattle, Washington

July 22, 2005

TO THE HONORABLE COMMISSIONER FOR PATENTS:

This brief is in support of a notice of appeal to the Board of Patent Appeals and Interferences filed in the above-identified application on May 24, 2005, appealing the final decision of the Examiner dated March 02, 2005, rejecting claims 1-23, 25, and 26. Appellant timely filed an After Final Response on April 18, 2005. The Examiner responded with an Advisory Action on May 02, 2005, maintaining the rejections. Appellant respectfully requests consideration of this appeal by the Board of Patent Appeals and Interferences for allowance of the present patent application.

07/27/2005 MAHME1 00000009 10802378

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I. REAL PARTY IN INTEREST

The real party in interest in the above-identified application is the assignee, Intel Corporation of 2200 Mission College Blvd., Santa Clara, California 95052. The assignment is recorded as Reel 015113 / Frame 0097 at the United States Patent and Trademark Office.

II. RELATED APPEALS

The appellant's undersigned attorney and the assignee identified above are not aware of other appeals or interferences that would directly affect or be directly affected by, or have a bearing on the Board's decision in the subject appeal.

III. STATUS OF THE CLAIMS

Appellants appeal the rejection of claims 1-23, 25, and 26.

IV. STATUS OF AMENDMENTS

No amendments have been filed subsequent to the final rejection.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

As stated in the specification, various embodiments of the invention relating to an air grate suitable for use to cover a fab level air flow opening, in accordance with one embodiment, are shown. For an embodiment, air grate 100 is designed to simultaneously meet:

- a) a semiconductor device manufacturing air flow requirement;
- b) a semiconductor device manufacturing fall through object size limitation;
- c) a semiconductor device manufacturing weight drop requirement; and
- d) a semiconductor device manufacturing spill protection requirement.

In alternate embodiments, air grate 100 may simultaneously meet more or less semiconductor device manufacturing requirements. For examples, only (a), (b) and (c), but not (d), or only (b) and (d), but not (a) and (c), and so forth. . (See, paragraphs 0012 - 0018 and Figures 1a – 1c).

VI. GROUNDS FOR REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1-23, 25, and 26 stand rejected under 35 U.S.C. §103(a) either over the teachings of U.S. Patent Application No. 2004/16335 submitted by Hampel (hereinafter “Hampel”) or over the teachings of U.S. Patent Application No. 6,612,084 issued to Rapisarda et al (hereinafter “Rapisarda”).

VII. ARGUMENT

1. Rejection of claims 1-23, 25, and 26 under 35 U.S.C. §103(a) was improper because neither Hampel nor Rapisarda, separately or in combination, teach or suggest all elements of the independent claims.

A. Claims 1-23, 25, and 26

35 U.S.C. §103(a) requires the invention being claimed be viewed as a “whole”. It is well settled that in an obviousness analysis, a determination of the differences between the invention being claimed, the person of ordinary skill, and whether such person will be motivated to modify the prior art and arrive at the invention being claimed is to be made by the Examiner.

Further, Under §103(a), a *prima facie* case of obviousness can be established only if the cited references, alone or in combination, teach **each and every element** recited in the claim. *In re Bell*, 991 F.2d 781 26 USPQ2d 1529 (Fed. Cir. 1993) (*emphasis added*).

Claim 1 is drawn to an air grate comprising:

one or more pieces of one or more materials adapted to partially cover no more than 40% of a spanned area, **allowing air to flow** through a plurality of openings disposed in the uncovered portion of the spanned area **to meet a semiconductor device manufacturing air flow requirement**, where **each of the openings is sufficiently small to meet a semiconductor device manufacturing fall through object size limitation**, and where the one or more materials are further **adapted to meet a semiconductor device manufacturing spill protection requirement**. (*emphasis added*)

Therefore, when viewed as a whole, claim 1 is directed, among other things, to:

allowing air to flow through a plurality of openings disposed in the uncovered portion of the spanned area to meet a semiconductor device manufacturing air flow requirement;

where each of the openings is sufficiently small to meet a semiconductor device manufacturing fall through object size limitation; and

where the one or more materials are further adapted to meet a semiconductor device manufacturing spill protection requirement.

When viewing the invention as a whole, the structural arrangement claimed stands for a novel arrangement that can simultaneously meet at least **three** requirements which at times are in tension. An example of the tension in the requirements is illustrated by the air flow requirement that necessitates for more/larger openings, the debris fall through limitation that generally calls for less/smaller openings, and the spill protection requirement that generally calls for lesser/smaller openings.

In contrast, *Hampel* simply fails to teach these three, at time conflicting, requirements. As clearly indicated in paragraph 0053 of *Hampel*:

Another **advantage** of the grate style floor 52 is that it **improves ventilation** through the building, which is particularly important when it is used as an outhouse, **and** as mentioned above, **dirt, rocks and urine falls through the grate 52.**

Thus, *Hampel* teaches of a grate that meets certain ventilation and debris fall through requirements. In *Hampel's* case, the requirements are complementary, as opposed to conflicting, as both, the desire to have increased ventilation and the desire to have increased debris fall through, call for increased amount of openings. Accordingly, *Hampel* does not teach or suggest structural arrangement for an air grate that can simultaneously meet at least three requirements that are conflicting at times.

Moreover, *Hampel* teaches away from the claimed invention. Specifically, *Hampel* teaches that holes in the grate are to encourage liquids to drop through the grate (see at least page 1, paragraph 12), while claim 1 includes the simultaneous meeting of a spill protection requirement (which inherently requires reduction of liquid passing through the grate).

The *Rapisarda* reference discloses an air grate for a clean room that may provide airflow and structural strength.

As indicated in column 3, lines 55-57 of *Rapisarda*:

The mesh top is **designed to provide the free flow of air** therethrough and **simultaneously to provide structural strength**. In accordance with one embodiment of the invention, the mesh top is fabricated from stainless steel and has openings of about 1 inch by 4 inches. The mesh top can be about 1 1/2-2 inches in height and the apron is preferably about 4-5 inches in height.

Thus, *Rapisarda* merely teaches an air grate that simultaneously meets only two requirements that may be conflicting. Accordingly, *Rapisarda* does not teach or suggest an air grate that simultaneously meets at least three requirements that are conflicting at times.

Specifically, *Rapisarda* fails to disclose, teach, or suggest of a grate capable of “allowing air to flow” suitable to “to meet a semiconductor device manufacturing **air flow requirement**” in tension with the requirement that the holes in the grate be “**sufficiently small** to meet a semiconductor device manufacturing fall through object size limitation”, and be adapted to “meet a semiconductor device manufacturing **spill protection requirement**” as recited in claim 1 of the instant application.

Therefore, Claim 1 is non-obvious and is patentable over either *Hampel* or *Rapisarda* whether taken together or separately.

Claims 9, 16, and 23 contain substantially the same limitations as Claim 1. Thus, for at least the same reasons, Claims 9, 16, and 23 are not obvious and patentable over either *Hampel* or *Rapisarda* individually or in combination.

Claims 2-8, 10-15, 17-22, and 25-26 are dependent upon Claims 1, 9, 16, and 23 respectively and are therefore patentable for at least the above-stated reasons.

B. Claims 7, 14, and 22.

Claims 7, 14, and 22 requires, *inter alia*, that one or more materials of the grate be capable of having a post installation **raised height of about 0.5 inches** to meet the semiconductor device manufacturing spill protection requirement. Neither *Hampel* nor *Rapisarda* teach or suggest of the limitation requiring the grate to have “a post installation **raised**

height of about 0.5 inches to meet the semiconductor device manufacturing spill protection requirement”. Therefore, for at least these additional reasons, Claims 7, 14, and 22 are not obvious and are patentable over either *Hampel* or *Rapisarda* individually or in combination.

C. Claims 8 and 15

Claims 8 and 15 requires, *inter alia*, that one or more materials of the grate be capable of covering the perimeter of the spanned area with an **inwardly inclined edge** to meet the semiconductor device manufacturing spill protection requirement. Neither *Hampel* nor *Rapisarda* teach or suggest of the limitation requiring the grate be capable of “covering the perimeter of the spanned area with an **inwardly inclined edge** to meet the semiconductor device manufacturing spill protection requirement”. Therefore, for at least these additional reasons, Claims 8 and 15 are not obvious and are patentable over either *Hampel* or *Rapisarda* individually or in combination.

D. Claims 7, 8, 14, 15, and 22.

In Applicants’ timely filed response to the Final Office action, the Examiner was requested to either provide references showing each of the limitations as recited above. Alternately, if the Examiner was taking “Official Notice” and relying on personal knowledge to support the finding of what is known in the art regarding the “raised height requirement” and/or the “inwardly inclined edge” requirement, Applicants’ respectfully requested that the Examiner provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2) and MPEP 2144.03.

MPEP 2144.03(c) requires, *inter alia*:

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also *Chevenard*, 139 F.2d at 713, 60 USPQ at 241 (“[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention.”). A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate. If applicant adequately traverses the examiner's assertion of official notice, **the examiner must provide**

documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, **the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding**. See 37 CFR 1.104(d)(2).

If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. **If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate.**

(emphasis added).

Therefore, the Examiner should have either (1) provided the requested references; (2) provided an affidavit or declaration setting forth specific factual statements and explanation to support finding; or (3) provided an explanation as to why traversal was inadequate. In the Advisory Action, the Examiner failed to provide any of the enumerated responses to the Applicants' request.

As such, "Official Notice" for purposes of this appeal fails and ought not to be considered.

VIII. CONCLUSION

Appellant respectfully submits that all the appealed claims in this application are patentable and requests that the Board of Patent Appeals and Interferences overrule the Examiner and direct allowance of the rejected claims.

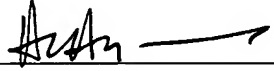
This brief is submitted in triplicate, along with a check for \$500 to cover the appeal fee for one other than a small entity as specified in 37 C.F.R. §1.17(c). We do not believe any fees, in particular extension of time fees, are needed. However, should that be necessary, please charge our Deposit Account No. 500393. In addition, please credit any overages to the same account.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

Date: July 22, 2005

by: _____


Al AuYeung
Reg. No.: 35,432

Schwabe, Williamson & Wyatt, P.C.
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1211 SW Fifth Avenue
Portland, Oregon 97222
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APPENDIX A – Listing Of Claims

1. (Previously Presented) An air grate comprising:
one or more pieces of one or more materials adapted to partially cover no more than 40% of a spanned area, allowing air to flow through a plurality of openings disposed in the uncovered portion of the spanned area to meet a semiconductor device manufacturing air flow requirement, where each of the openings is sufficiently small to meet a semiconductor device manufacturing fall through object size limitation, and where the one or more materials are further adapted to meet a semiconductor device manufacturing spill protection requirement.
2. (Original) The air grate of claim 1, wherein the one or more pieces of one or more materials comprise a single molded piece of one or more materials.
3. (Original) The air grate of claim 1, wherein the one or more pieces of one or more materials comprise one or more pieces of one or more materials selected from a group consisting of aluminum, iron and steel.
4. (Original) The air grate of claim 1, wherein the semiconductor device manufacturing fall through object size limitation is about 1 inch, and the spanned area comprises a circular area with a diameter of about 15 inches.
5. (Original) The air grate of claim 1, wherein the openings are arranged in a substantially row and column manner.
6. (Original) The air grate of claim 1, wherein the semiconductor device manufacturing fall through object size limitation is about 1 inch, the spanned area comprises a circular area with a diameter of about 15 inches, the openings are arranged in a substantially row and column manner, and the one or more materials have a thickness less than 1.0 inch and a tensile strength to meet a semiconductor device manufacturing weight drop requirement of 300 lbs from a height of 2 feet.

7. (Previously Presented) The air grate of claim 1, wherein the one or more pieces of one or more materials are further adapted to have a post installation raised height of about 0.5 inch to meet the semiconductor device manufacturing spill protection requirement.
8. (Previously Presented) The air grate of claim 1, wherein the one or more pieces of one or more materials are further adapted to cover the perimeter of the spanned area with an inwardly inclined edge to meet the semiconductor device manufacturing spill protection requirement.
9. (Previously Presented) An air grate comprising:

one or more pieces of one or more materials adapted to partially cover no more than 40% of a spanned area, allowing air to flow through a plurality of openings disposed in the uncovered portion of the spanned area to meet a semiconductor device manufacturing air flow requirement, where the one or more materials have a thickness less than 1.0 inch and a tensile strength to meet a semiconductor device manufacturing weight drop requirement of 300 lbs from a height of 2 feet, and where the one or more materials are further adapted to meet a semiconductor device manufacturing spill protection requirement.
10. (Original) The air grate of claim 9, wherein the one or more pieces of one or more materials comprise a single molded piece of one or more materials.
11. (Original) The air grate of claim 9, wherein the one or more pieces of one or more materials comprise one or more pieces of one or more materials selected from a group consisting of aluminum, iron and steel.
12. (Original) The air grate of claim 9, wherein the semiconductor device manufacturing fall through object size limitation is about 1 inch, and the spanned area comprises a circular area with a diameter of about 15 inches.
13. (Previously Presented) The air grate of claim 9, wherein the openings are arranged in a

substantially row and column manner.

14. (Previously Presented) The air grate of claim 9, wherein the one or more pieces of one or more materials are further adapted to have a post installation raised height of about 0.5 inch to meet the semiconductor device manufacturing spill protection requirement.
15. (Previously Presented) The air grate of claim 9, wherein the one or more pieces of one or more materials are further adapted to cover the perimeter of the spanned area with an inwardly inclined edge to meet the semiconductor device manufacturing spill protection requirement.
16. (Original) An air grate comprising:
one or more pieces of one or more materials adapted to partially cover a spanned area to allow air to flow through a plurality of openings disposed in the uncovered portion of the spanned area to meet a semiconductor device manufacturing air flow requirement, with the one or more pieces of one or more materials being further adapted to cover the perimeter of the spanned area with an inwardly inclined edge to meet a semiconductor device manufacturing spill protection requirement.
17. (Original) The air grate of claim 16, wherein the one or more pieces of one or more materials comprise a single molded piece of one or more materials.
18. (Original) The air grate of claim 16, wherein the one or more pieces of one or more materials comprise one or more pieces of one or more materials selected from a group consisting of aluminum, iron and steel.
19. (Original) The air grate of claim 16, wherein the semiconductor device manufacturing fall through object size limitation is about 1 inch, and the spanned area comprises a circular area with a diameter of about 15 inches.
20. (Original) The air grate of claim 16, wherein the openings are arranged in a substantially row

and column manner.

21. (Original) The air grate of claim 16, wherein the semiconductor device manufacturing fall through object size limitation is about 1 inch, and the spanned area comprises a circular area with a diameter of about 15 inches, the openings are arranged in a substantially row and column manner, and the one or more materials have a thickness less than 1.0 inch and a tensile strength to meet a semiconductor device manufacturing weight drop requirement of 300 lb from a height of 2 feet.
22. (Original) The air grate of claim 16, wherein the one or more pieces of one or more materials are further adapted to have a post installation raised height of about 0.5 inch to meet a semiconductor device manufacturing spill protection requirement.
23. (Previously Presented) A method comprising:
 - forming an air grate mold for use to make an air grate that simultaneously meets (a) a semiconductor device manufacturing spill protection requirement, and at least two of ((b) a semiconductor device manufacturing air flow requirement, (c) a semiconductor device manufacturing fall through object size limitation, (d) a semiconductor device manufacturing weight fall requirement); and
 - injecting a material into the air grate mold to create an air grate.
24. (Canceled)
25. (Original) The method of claim 24, wherein the air grate meets all four enumerated requirements.
26. (Original) The method of claim 23, wherein the material is selected from a group consisting of aluminum, iron and steel.

APPENDIX B – Copies Of Evidence Submitted

No evidence has been submitted under 37 C.F.R. 1.130, 1.131, or 1.132. No evidence entered by Examiner has been relied upon by Appellants in the appeal.

APPENDIX C – Related Proceedings

The appellant's undersigned attorney and the assignee identified above are not aware of other appeals or interferences that would directly affect or be directly affected by, or have a bearing on the Board's decision in the subject appeal.